

***IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.***

CRM-M No.10001 of 2018

Date of Decision: 04.09.2018

Harwinder Singh @ Harwinder

....Petitioner

Versus

State of Punjab

....Respondent

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Lakhwinder Singh Mann, Advocate
for the petitioner.

Ms. Rashmi Attri, A.A.G., Punjab.

DAYA CHAUDHARY, J.

Petitioner-Harwinder Singh @ Harwinder has approached this Court by way of filing the present petition under Section 439 Cr.P.C for grant of regular bail to him in case FIR No.172 dated 15.06.2017 registered under Section 22 of the NDPS Act at Police Station Nakodar Sadar, District Jalandhar.

Learned counsel for the petitioner submits that the petitioner has falsely been implicated in the case, whereas, he has no connection with the alleged offence. The FIR, in question, was got registered by ASI Paramjit Singh with the allegation that the petitioner was apprehended with 80 grams of intoxicant powder. The bail application filed by the petitioner has been dismissed by learned Special Court, Jalandhar on the ground that as per Chemical Report, *Dyphenoxylate Hydrochloride* was found in the intoxicant powder and the same is of commercial quantity. Learned counsel

also submits that the petitioner is in custody since 15.06.2017. The FIR, in question, has been registered under Section 22 of the NDPS Act, whereas, said *Dyphenoxylate* falls within the purview of manufactured drug and the FIR cannot be registered under Section 22 of the NDPS Act but it can be registered under Section 21 of the NDPS Act. As per schedule of NDPS Act, more than 50 grams of *Dyphenoxylate* salt is commercial and the alleged recovery from the petitioner is marginally higher than the commercial quantity. Learned counsel further submits that the petitioner is not involved in any case under the NDPS Act. At the end, learned counsel for the petitioner submits that all witnesses are the official witnesses and there is no possibility that the petitioner may influence the witnesses or tamper with the evidence.

Learned State counsel has not disputed the custody period and other submissions made by learned counsel for the petitioner.

Heard the arguments of learned counsel for the parties and have also perused the contents of the FIR as well as other documents available on the file.

Admittedly, 80 grams of intoxicant power was allegedly recovered from the possession of the petitioner and it was found to be *Dyphenoxylate Hydrochloride*, which is a manufacturing drug as per Government of India Notification No.SO 826(E) 14.11.1985 and SO 40(E) dated 29.01.1993. Manufacturing drugs are punishable under Section 21 of the NDPS Act. The trial of the case under Sections 21 and 22 of the NDPS Act would be debatable at the time of trial. The petitioner is in custody since 15.06.2017 and all witnesses are the official witnesses and there is no possibility that the petitioner may influence the witnesses or tamper with the

evidence. Under similar circumstances, accused Amarpreet Singh @ Preet has filed **CRM-M No.7223 of 2017** and he was granted bail in that case on 05.04.2017.

In view of the facts as mentioned above, the present petition is allowed and petitioner-Harwinder Singh @ Harwinder is directed to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court.

04.09.2018
gurpreet

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No